

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of

Petitions for Declaratory Ruling Regarding Public,  
Educational, and Governmental Programming

MB Docket No. 09-13  
CSR-8126, CSR-8127, CSR-8128

**COMMENTS OF MONTGOMERY COUNTY, MARYLAND**

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March 9, 2009

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## **SUMMARY**

Montgomery County, Maryland supports the petitions filed in this docket.

The Michigan Petitioners in CSR-8128 have shown that the proposed treatment of PEG channels by Comcast is inconsistent with the company's obligation to provide PEG channels as part of the basic service tier. The City of Lansing (CSR-8127) and the Alliance for Community Media and other petitioners (CSR-8126) have shown that the AT&T Channel 99 platform violates several provisions of the Cable Act, including the obligation to pass through closed captioned programming. In both cases, the cable operators are seeking to exercise editorial control over the channels that is forbidden by 47 U.S.C. § 531(e). AT&T actually strips content from the channels, but Comcast's model, which treats PEG channels as channels it can market as it chooses, also violates the company's obligations with respect to PEG channels. That obligation, as shown by the history of PEG channels, court cases, and the legislative history and language of the Cable Act, is an obligation to deliver the channels to subscribers on a non-discriminatory basis, and certainly without special charges.

The County's award-winning channels produced more than 22,466 hours of locally-produced programming last year. Most of the programming carried on the County's channel is closed captioned, and a model (like the AT&T model) that strips closed captioning or secondary audio impairs the ability of the County to communicate with the entire community. The channels are used to deliver emergency messages: on September 11, 2001, at a time when people in this area feared that there could be additional attacks on schools and public buildings, all of the County's PEG channels were used to ensure that subscribers had the most current information on local developments. More recently, the County's PEG channels were used to provide information about the Rock Creek water main break that required local rescues and road closures. As the County's own use of its PEG channels suggests, the consequence of allowing

operators to unlawfully discriminate against PEG channels is to harm the public. It is appropriate for the Commission to act promptly to grant the petitions, and prevent that harm.

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**COMMENTS OF MONTGOMERY COUNTY, MARYLAND**

Montgomery County, Maryland (the “County”), submits these comments in response to the Media Bureau’s request for comments released February 6, 2009. As of this writing, neither Comcast nor any other cable operator has announced plans in the County to either: (i) deliver PEG channels in a way that makes the channels less accessible to subscribers than other broadcast channels on the basic service tier, as Comcast has proposed to do in Michigan; (ii) or to carry PEG channels as an internet-streaming video application, as AT&T has done with its U-Verse product. Nevertheless, the County remains concerned that cable operators will soon similarly burden access to PEG channels in the County, unless the Commission acts to grant the relief requested in the petitions.

As we discuss below, the County’s PEG channels play a very important role in the community that could be jeopardized if cable operators unlawfully make PEG channels less accessible than broadcast programming carried on the basic service tier. The Media Bureau recently recognized that if cable operators may require consumers to endure significant burdens to view PEG channels, as compared to primary broadcast signals carried on the basic service tier, the purposes served by PEG channels – and by a single, basic service tier – will be defeated. In

short, the problems are real, and the Commission has ample statutory authority to address them, as the Petitions have shown, and as we explain below.

**I. PEG CHANNELS PLAY AN IMPORTANT ROLE IN THE COUNTY THAT UNLAWFUL DISCRIMINATORY TREATMENT WOULD UNDERMINE.**

Before turning to the legal analysis, which we discuss *infra*, the Commission should understand what is at stake. The County's PEG channels play an important role in the community that could be jeopardized if cable operators unlawfully make PEG channels less accessible than broadcast programming carried on the basic service tier.

Each of the County's three providers currently carries eleven (11) PEG channels and the County reserves the right to request carriage of up to three (3) additional channels. Declaration of Mitsuko K. Herrera ("Herrera Declaration") ¶ 3. In FY2008, the channels produced more than 22,466 hours of locally-produced programming. *Id.* ¶ 4. This includes emergency messages, live traffic camera feeds, community announcements, televised coverage of local community events and government meetings, as well as public affairs, instructional, informational, foreign language, recreational, environmental, and arts and entertainment programming. *Id.* The PEG channels have been both widely used and widely recognized for their quality of programming. Over 600 individuals and organizations produce programming on the County's PEG channels each year. *Id.* ¶ 4. The channels have won a number of television programming awards including: Telly, Aegis Video and Film Production, Crystal Vision, DV, Pegasus, Omni, Aurora, regional Emmy, and National Association of Telecommunications Officers and Advisors Government Programming awards. *Id.* ¶ 3.

The County's PEG channels have been used to deliver important messages to the community. On September 11, 2001, all of the County's PEG channels were used to provide live information to subscribers. In the early morning hours, many residents were concerned that

Montgomery County was within the potential flight path of other aircraft and that the U.S. military would take action against such aircraft. The County Executive, all members of the County Council, the Superintendent of Montgomery County Public Schools, and the President of Montgomery Community College, provided a live message over all eleven PEG channels to reassure the public that the County was in contact with the federal government and taking all steps necessary to ensure the safety of the public. *Id.* ¶ 6. The County's government access channel was also used to provide information about the Washington, DC, sniper in 2002. *Id.* Recently, the County's PEG channels were used to provide information about significant water main breaks, including a water main break on River Road that required rescue of stranded motorists and significant road closures. *Id.* The channels have also recently carried breaking announcements, tribute videos related to the sudden deaths of County Council members, school closings, and other important forums. *Id.* The importance of having such information as widely available as possible to County residents cannot be underestimated. If cable operators were free to exercise control over the County's PEG channels and to make those channels less accessible to viewers than the primary broadcast signal on the basic service tier; or if operators could effectively require customers to make special requests, go through extra steps, or to pay extra to receive the channels, the County and its residents would be harmed.

Likewise, the provision of the channels in a manner that makes it more difficult for subscribers to access the PEG channels in the same manner as other basic service channels will adversely affect the ability of those who wish to use PEG channels to reach their audience. As the ACM has shown, it is not possible to surf back and forth between AT&T's PEG platform and normal commercial channels on the AT&T system. ACM Petition at 11-12. According to one

study performed on behalf of Montgomery County’s two public access channels, 73% of viewers learned of PEG programming through channel surfing. *Id.* ¶ 5.

## **II. THE CABLE ACT BARS THE EXERCISE OF DISCRIMINATORY CONTROL OVER PEG CHANNELS.**

The Commission has ample authority to grant the relief requested in the petitions, because the Cable Act bars the proposed discriminatory treatment of PEG channels. As the Media Bureau has properly recognized, this bar flows from, among other things, the requirement that a cable operator “provide its subscribers a separately available basic service tier.” 47 U.S.C. § 543(b)(7). But discriminatory treatment is also barred, more broadly, by other provisions of the Cable Act.

### **A. Burdening Local Subscribers’ Access To PEG Channels Is Not Consistent With the Obligations Imposed By the Designation of PEG Channel Capacity Under the Cable Act.**

On January 18, 2009, Monica Shah Desai, Chief of the Media Bureau, released a letter summarizing the Bureau’s recommendations to the Commission. That letter states that “Congress contemplated only one basic service tier, to be provided on a non-discriminatory basis to all subscribers.” It continues: “[I]f a provider chooses to convert PEG channels,<sup>1</sup> it must convert the entire basic service tier, whether or not the system is subject to effective competition.” The Media Bureau’s letter is consistent with testimony the FCC presented to Congress, which stressed that “the purpose of the basic service tier” would be defeated if consumers were “[s]ubject[ ] . . . to additional burdens to watch their PEG channels.” Statement of Monica Shah Desai, *Public, Educational, and Governmental (PEG) Access to Cable*

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<sup>1</sup> We believe that in this hypothetical, Ms. Desai assumes that the operator carries PEG channels in only one format. It would of course not be objectionable if an operator also carried the PEG channels in analog form.



*Television Before the House Subcomm. On Financial Services and General Government*  
(September 17, 2008).

Although it is not necessary to draw that conclusion to address the questions from the district court presented in the Dearborn petition,<sup>2</sup> the conclusion is correct on the law, and supported by far more than the “purpose” of the basic service tier. This Commission has expressly ruled that the 1992 amendments to the Cable Act established a requirement for a “single basic service tier” consisting of “all signals carried in fulfillment of the requirements of sections 534 and 535” and “[a]ny public, educational, and governmental access programming required by the franchise of the cable system to be provided to subscribers.” 47 C.F.R. § 76.901(a); 47 U.S.C. § 543(b)(7). It follows that a cable operator may not somehow subdivide that tier, by making it more difficult or expensive for subscribers to receive PEG programming, as compared to signals carried in fulfillment of the requirements of Sections 614 and 615.

Moreover, this conclusion has significant ramifications for the AT&T petitions. CSR-8126, CSR-8127. The Comcast (and AT&T) treatment of PEG defies the nature of, and the operator’s duty with respect to, channel capacity designated for PEG use reflected in the Cable Act. Comcast’s actions with respect to PEG are rooted in its view that *it* controls the PEG channels, and may deliver the channels to subscribers, for business reasons or otherwise, as it pleases. As Comcast’s Executive Vice President, David Cohen, told the House Telecommunications and Internet Subcommittee:

As we look at the packages of channels that we are offering, we try and make judgments and assessments based on overall customer demand. And we’re trying to migrate channels that may have lesser customer demand in

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<sup>2</sup> See Petition for Declaratory Ruling of City of Dearborn, Michigan, *et al*, at 9-22 (referring questions).

order to add high-definition channels and other services that have greater customer demand.<sup>3</sup>

The AT&T Channel 99 platform reflects a similar attitude.

However, under the Cable Act, capacity designated for PEG use is not the same as any other channel subject to an operator's control. Nor is the character of such designated channel capacity established solely by the terms of franchise agreements. The courts have recognized that a franchise agreement "gives life to Section 531(a), but Section 531(a) also establishes a framework for these franchise agreements: that the channels be set aside for public, educational, and governmental use." *Time Warner Cable of New York City v. City of New York*, 943 F. Supp. 1357, 1367 (S.D.N.Y. 1996), *aff'd on other grounds*, 118 F.3d 917 (2d Cir. 1997). This phrase – capacity designated for "public, educational, or governmental use" – appears repeatedly in the Cable Act,<sup>4</sup> but it is not defined. *Goldberg v. Cablevision Systems Corp.*, 261 F.3d 318, 321 (2d Cir. 2001). However, "Congress's meaning and intent is apparent from the legislative history of the Cable Act." *City of New York*, 943 F. Supp. at 1367.<sup>5</sup> A cable operator may not unilaterally act inconsistently with this federally-established framework.

Even before the Cable Act was adopted, the Supreme Court recognized that, with respect to PEG, cable systems are relegated "*pro tanto*, to common carrier status." *FCC v. Midwest Video Corp.*, 440 U.S. 689, 700-701 (1979). While the Court obviously was not somehow

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<sup>3</sup> Testimony of David Cohen, January 29, 2008, available at: <http://www.youtube.com/watch?v=-uljoVhR0Uk>

<sup>4</sup> See, e.g., 47 U.S.C. § 522(1) (defining "activated channels" as those "designated for public, educational, or governmental use"); 47 U.S.C. § 522(16) (defining "public, educational, or governmental access facilities" as "channel capacity designated for public, educational, or governmental use" and associated facilities and equipment); 47 U.S.C. § 531.

<sup>5</sup> As Justice Kennedy explained, PEG channels must "comport in some sense with the industry practice to which Congress referred in the statute." *Denver Area Educational Telecommunications Consortium v. FCC*, 518 U.S. 727, 790 (1996).

importing PEG channels into Title II of the Communications Act, the Court was recognizing that operator's authority over PEG channels is necessarily limited and certainly no greater than that a common carrier would have with respect to messages it had a duty to carry. It is well-established that a common carrier's duty to transmit prevents a carrier from discriminating against the messages that it is obligated to carry, in favor of those that it would prefer to carry.<sup>6</sup> Here, likewise, the duty to transmit in a non-discriminatory manner arises from the very designation of the channels for PEG use, as the Cable Act makes clear. The Act's legislative history shows that Congress intended PEG channels to be available to all without additional charges, expense, or burden. The Cable Act "continues the policy of allowing cities to specify in cable franchises that channel capacity and other facilities be *devoted to such use*." H.R. Rep. No. 98-934, at 30 (1984), *as reprinted in* 1984 U.S.C.C.A.N. 4655, 4667 (emphasis added). It goes on to explain:

A requirement of reasonable third-party access to cable systems will mean a wide diversity of information sources *for the public* – the fundamental goal of the First Amendment – without the need to regulate the content of programming provided over cable. . . . Public access channels are often the *video equivalent of the speaker's soap box or the electronic parallel to the printed leaflet*. They provide groups and individuals who generally have not had access to the electronic media with the opportunity to become *sources of information in the electronic marketplace of ideas*. PEG channels also *contribute to an informed citizenry* by bringing local schools into the home, and by *showing the public* local government at work.

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<sup>6</sup> Thus, for example, the duty to transmit ascribed to telegraph operators included not merely the duty to transmit a message accurately, but also a duty to do so impartially, and with "reasonable care and diligence according to the request of the sender." *Candee v. W. Union Tel. Co.*, 34 Wis. 471, 477-78 (1874); *Atl. Coast Line R.R. Co. v. Mazursky*, 216 U.S. 122, 133 (1910) (duty of good faith and impartiality). At common law, the duty to deliver a message from the sender to the *intended recipients* gave rise to tort liability for negligent transmission, *W. Union Tel. Co. v. Taylor*, 114 So. 529, 531 (Fla. 1927). Moreover these duties derived from the nature of the business, and were independent of contractual obligations with the sender. *Mentzer v. W. Union Tel. Co.*, 62 N.W. 1 (Iowa 1895).

House Report at 30 (1984), 1984 U.S.C.C.A.N. at 4667 (emphasis added).<sup>7</sup> This use of designated capacity is consistent with a common carrier-like obligation to distribute programming free from discriminatory control. It is utterly inconsistent with the notion that a cable operator is free to bundle, sell, format and package the PEG channels as it sees fit.<sup>8</sup>

In 1992, Congress re-emphasized the nature of the PEG obligation. That year, Congress adopted 47 U.S.C. § 541(b)(3), prohibiting franchising authorities from requiring an operator to provide any telecommunications services – which are, by definition, common carrier services. 47 U.S.C. § 153(46). However, precisely because of the nature of the obligations created by the designation of PEG channels, the statute makes a specific exception for PEG channels. 47 U.S.C. § 541(b)(3)(D). The 1992 legislative history makes clear that, consistent with this obligation, the operator is not free to restrict unilaterally the viewability or accessibility of the channels:

PEG programming is delivered on channels set aside for community use in many cable systems, and *these channels are available to all community members* on a nondiscriminatory basis, usually without charge. . . . PEG channels serve a substantial and compelling government interest in diversity, a free market of [ideas,] and an informed and well-educated citizenry. . . . Because of the interests served by PEG channels, the Committee believes that *it is appropriate that such channels be available*

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<sup>7</sup> Congress’s view of the inherently democratic underpinnings of this “public, educational, or governmental use” is reflected not just in how broadly Congress intended the material to be disseminated, but also in who Congress envisioned would be creating it: “Public access channels available under [the Cable Act] would be available to all, poor and wealthy alike. . . .” House Report at 36 (1984), 1984 U.S.C.C.A.N. at 4673. It would be an odd result indeed if, through a cable operator’s delivery choices, already disenfranchised members of a community would not be able to view the very content they created.

<sup>8</sup> The Supreme Court has characterized the rights obtained through the designation of PEG channels as akin to an easement. *Denver Area Educ. Telecomms Consortium v. FCC*, 518 U.S. 727, 760-61 (1996); *see also id.* at 734 (referring to PEG channels as “special channels” available to those to whom the Cable Act gives “special cable system access rights”). Under property law, when an easement is granted, ambiguities with respect to that grant are resolved in favor of the grantee. 7 Thompson on Real Property § 60.04(a), at 451 (Thomas ed.1994).

*to all cable subscribers on the basic service tier and at the lowest reasonable rate.*

H.R. Rep. No. 102-628 at 85 (1992) (emphasis added).<sup>9</sup>

For a cable operator to depart from this duty, it must obtain specific authorization, a point the FCC has previously recognized. *In re Implementation of Section of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation*, 8 FCC Rcd. 5631, 5737-38, (1993) (requiring a cable operator to carry PEG channels on the basic tier “unless the franchising agreement explicitly permits carriage on another tier”). Neither AT&T nor Comcast can claim such an authorization.

**B. To Provide a PEG Channel in a Manner That Significantly Alters the PEG Signal, Its Viewability, or Its Accessibility Is To Exercise Unlawful “Editorial Control” Over the Channel.**

In the ACM Petition, the petitioners urge the FCC to find that under Section 611(e), 47 U.S.C. § 531(e), AT&T has impermissibly exercised editorial control over PEG channels. ACM Petition 30. The FCC should adopt this view, and more generally recognize that Section 531(e) establishes a broad bar against operator actions that discriminate against PEG channels.<sup>10</sup>

Consistent with FCC precedent, Section 611(e), 47 U.S.C. § 531(e), bars a cable operator from targeting PEG programming because of its content, and thereby making that content a less effective form of communication. Interpreting a similar “editorial control” statute applicable to

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<sup>9</sup> Even members of the Committee who objected to the bill as reported agreed that it was important to ensure that operators could not restrict access to PEG channels: “Making over-the-air broadcast and PEG access channels available on a separate [basic service] tier promotes the time-honored principle of localism.” *Id.* at 183.

<sup>10</sup> The district court in the Comcast case did not refer a Section 531(e) question to the Commission, so this portion of the comments bears upon the AT&T petitions.

DBS providers,<sup>11</sup> the FCC stressed the need for *even-handed* treatment in an operator's imposition of technical requirements:

[W]e believe that a DBS provider can set technical quality standards for programming carried on its satellite system that can be applied to *all* programming, including that carried on the set-aside channels. We do not believe that *even-handed* application of technical quality standards amounts to "editorial control" of programming content.

*In re Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992*, 13 FCC Rcd. 23254, 23301 ¶ 112 (1998) (emphasis added).<sup>12</sup> Here, the cable operators' technical decisions with respect to PEG are anything but even-handed.<sup>13</sup>

Other FCC decisions also emphasize that prohibitions of editorial control should be interpreted broadly to effectuate Congressional intent. In the FCC's decision *In re Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58*, 7 FCC Rcd. 5781 (1992), the agency adopted rules designed to ensure that telephone companies providing video programming operated as conduits, and did not exercise the sort of editorial control that cable operators typically exercise over their own commercial service offerings :

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<sup>11</sup> 47 U.S.C. § 335(b)(3).

<sup>12</sup> To be sure, as the FCC explained in the DBS Order, limitations on editorial control must be interpreted in light of "differences in the language of the . . . editorial control prohibitions . . . but also by differences in the distinct statutory schemes of which they are a part." *Id.* at ¶¶ 102-103. However, if anything, the limitation in Section 531(e) erects a higher wall against operator interference than that erected by the DBS ruling, see, *supra*.

<sup>13</sup> Where Congress meant to limit the scope of a prohibition on editorial control, it made that limitation clear. Section 613(e) of the Cable Act, 47 U.S.C. § 533(e), authorizes states and localities to own cable systems, so long as they do not "exercise any editorial control *over the content* of any cable service" carried on the publicly-owned system. If editorial control merely encompassed content control, the italicized language would not have been necessary. Similarly, 47 U.S.C. § 335(b)(3) provides that a direct broadcast satellite operator may not exercise "editorial control over any video programming provided" pursuant to requirements that DBS operators carry a certain amount of educational and noncommercial programming. The FCC found that the qualifying phrase "video *programming provided*" allowed the operator flexibility in selecting the programming to be provided. By contrast, the prohibition on editorial control in Section 531(e) reaches *any* editorial control over *any* use of the PEG channels.

[W]e are very broadly proscribing telephone company activities that could be construed as their engaging in selection of video programming as traditional cable operators. Cable operators select video programming by making decisions concerning the price of video program offerings and by bundling, packaging, and creating tiers of video programming that affect the availability of video programming to consumers.

*Id.* at 69; *see also*, n.180. This FCC decision recognizes that decisions as to the manner in which programming is bundled, packaged, and sold involve the exercise of editorial control. It is consistent with long-standing First Amendment precedent. Editorial control encompasses not just control of content, but also control of the editorial process, through which decisions are made as to how information will be presented, and to whom it will be presented. *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622 (1994) (broadcast carriage requirements interfere with cable operators' editorial discretion); *United States v. Am. Library Ass'n, Inc.*, 539 U.S. 194 (2003) (restriction affecting kinds and amounts of material that can be presented is a kind of editing). Certainly, "deliberate and calculated" devices "to limit the circulation of information to which the public is entitled" involve a prohibited interference with speech. *Pitt News v. Pappert*, 379 F.3d 96 (3d Cir. 2004).

As the ACM Petition illustrates, technical decisions with respect to PEG channels can directly affect the accessibility and availability of PEG programming. Thus, for example, when AT&T strips PEG channels of secondary audio or closed captioning, it actually prevents a programmer from communicating with an intended audience – or at least significantly hinders that access.<sup>14</sup> This is, of course, something an editor would be expected to do with respect to material the editor controls: it would cut out portions that it deemed less important and it would control the placement of the information, giving priority to those communications the editor

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<sup>14</sup> The effect in the County would be significant: over 99% of the programming carried on the County's channel, County Cable Montgomery, is closed-captioned. Herrera Declaration ¶ 4.

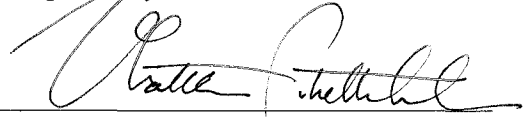
prefers. But it is precisely this type of editorial control that Congress intended to prohibit: “With regard to the access requirement, cable operators act as a [sic] conduits.” 1984 U.S.C.C.A.N. at 4672. This channel capacity is “controlled by a person other than the cable operator.” 1984 U.S.C.C.A.N. at 4668. Given this clear Congressional intent, the FCC should find that Section 531(e) prevents an operator from unilaterally making decisions that adversely affect the accessibility and availability of PEG programming – including, *inter alia*, through discriminatory PEG channel positioning (or menu access), *de facto* higher pricing of PEG channels vis-a-vis other basic tier channels, the stripping of portions of the signal; or the material degradation of the signal provided.

### CONCLUSION

For all the foregoing reasons, the Commission should grant the petitions.

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**DECLARATION OF MITSUKO R. HERRERA**

I, Mitsuko R. Herrera, declare as follows:

1. I am the Cable Communications Administrator for Montgomery County, Maryland. I reside at 317 Highview Avenue, Silver Spring, MD 20902. My telephone number is (301) 565-9733.
2. Montgomery County has been closely following events related to Comcast's proposed PEG channel digitalization in Michigan. The County is concerned that cable operators may soon similarly burden subscribers' access to PEG channels in the County. I submit this declaration to emphasize the importance of PEG channels in the County and to address the potential harms that would arise if cable operators took such actions here.
3. Comcast is the largest cable provider in Montgomery County. Montgomery County also has cable franchises with Verizon and RCN. Each of these providers carries eleven total PEG channels and the County reserves the right to request carriage of up to three additional PEG channels. These PEG channels have been in existence since 1985 and include:

CCM – County Cable Montgomery  
AMTV-19 – Access Montgomery  
AMTV-21 – Access Montgomery  
ITV Channel 33 – MCPS Instructional TV  
ITV Channel 34 – MCPS Instructional TV

MCTV10 – Montgomery College Television  
UMUC-TV – University of Maryland-University College Television  
UMTV – University of Maryland Television  
Takoma Park City TV  
Rockville Channel 11  
MMC TV Channel 16 – Montgomery Municipal Cable

These PEG channels have won a number of television programming awards including, Telly, Aegis Video and Film Production, Crystal Vision, DV, Pegasus, Omni, Aurora, regional Emmy, and National Association of Telecommunications Officers and Advisors Government Programming awards.

4. In FY2008, these channels produced more than 22,466 hours of locally-produced programming. Over 99% of the programming carried on the County's channel, County Cable Montgomery, is closed-captioned. Over 600 individuals and organizations produce programming on these PEG channels each year. These channels provide emergency messages, live traffic camera feeds, community announcements, televised coverage of local community events and government meetings, as well as public affairs, instructional, informational, foreign language, recreational, environmental, and arts and entertainment programming. PEG channels not only provide vital and interesting information, but they also provide in-home access to government and community events for persons with disabilities and limited mobility.

5. The isolation of PEG channels from other local channels, and in particular the limitation the AT&T platform places upon the ability of subscribers to "surf" back and forth between PEG and non-PEG channels is significant. According to one study performed on behalf of Montgomery County's two public access channels, 73% of viewers learned of PEG programming through channel surfing.

6. If PEG programming were provided in a manner so that it is not as accessible, or costs more to receive than the most accessible programming on the lowest-cost-tier, subscribers

would be deprived of important emergency information and community announcements. On September 11, 2001, all of the County's PEG channels were used to provide live information to subscribers. In the early morning hours, many residents were concerned Montgomery County was within the potential flight path of other aircraft and that the U.S. military would take action against such aircraft. The County Executive, all members of the County Council, the Superintendent of Montgomery County Public Schools, and the President of Montgomery [Community] College, provided a live message over all eleven PEG channels to reassure the public that the County was in contact with the federal government and taking all steps necessary to ensure the safety of the public. The County's government access channel was also used to provide information about the Washington, DC sniper in 2002. Recently, the County's government access channel was used provided information about significant water main breaks – including a water main break on River Road that required the rescue of stranded motorists and significant road closures. The PEG channels have also provided breaking announcements and tribute videos related to the sudden deaths of two County Council members, candidate forums, budget hearings, League of Women Voters forums, and school closings.

#### **VERIFICATION**

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on the 9th day of March, 2009, in Montgomery County, Maryland.

A handwritten signature in cursive script, reading "Mitsuko R. Herrera", is written over a horizontal line.

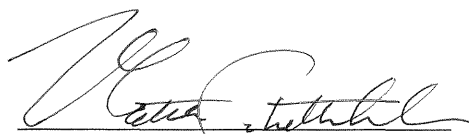
MITSUKO R. HERRERA

CERTIFICATE OF SERVICE

I hereby certify that I have, on this 9th day of March 2009, caused a true and correct copy of the foregoing Comments to be served on the following individuals via first-class U.S. mail, postage prepaid:

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